

Internal Revenue Service

Number: **201013024**

Release Date: 4/2/2010

Index Number: 303.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO2

PLR-134242-09

Date:

November 20, 2009

Legend:

X =

Y =

CORP =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

n =

a% =

b% =

c% =

Dear :

This letter responds to your July 10, 2009 letter requesting rulings as to the federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

FACTS

On Date 1, X died. Under the terms of X's will (the "Will") the executor of X's estate (the "Executor") was to transfer X's residuary estate, which contained all of the CORP shares of stock (the "Stock") owned by X, to the trustee (the "Trustee") of a revocable trust (the "Trust") formed by X.

The Executor timely elected to pay Federal and State estate taxes in installments pursuant to § 6166. Between Year 1 and Year 2, the Executor periodically tendered some of the Stock for redemption, to provide him liquidity to meet required installment payments of Federal and State estate taxes, interest and other administrative expenses. CORP treated all such transactions as redemptions pursuant to § 303(a).

The Executor has retained possession of some of the Stock because Federal and State taxes remain unpaid, and thus the Executor has potential personal liability for such estate taxes.

The dispositive terms of the Trust are:

- a. During Y's lifetime, Y (a child of X) is the Trust's sole income beneficiary.
- b. The Trustee is authorized to distribute principal, even to the extent of the whole, to Y (and only to Y), at the Trustee's discretion, based solely upon Y's best interest.
- c. The Trust is to terminate n years after the death of X. Thus, the Trust is to terminate on Date 2.
- d. If Y dies prior to Date 2, the assets of the Trust will be held for the benefit of all grandchildren of X.
- e. If Y lives until Date 2, all assets are to be distributed outright to Y.

Several beneficiaries of the Trust sued each other with respect to the terms of the Trust. Under the terms of a Settlement Agreement resolving this litigation, X's grandchildren and great-grandchildren assigned all their remainder rights in the Estate and Trust to Y in exchange for Y's agreed upon cash payments. The Settlement Agreement described this assignment as a "purchase" of the remainder interests by Y. The actuarial value of each grandchild's interest in the Trust was determined to be approximately a%. The aggregate value for all the grandchildren was b%, and for Y, c%. Y's c% interest was nearly all of the value of the Trust, and the grandchildren's b% interest was a de minimis amount.

Pursuant to the Settlement Agreement, the Executor, Trustee and Y concluded that Y became the sole, absolute fee owner of the Trust assets. Accordingly, the parties agreed that the Trust corpus was distributable to Y as soon as it was distributed by the Executor to the Trustee. In lieu of the Executor distributing property to the Trustee, and immediately thereafter, the Trustee distributing it to Y, the Executor was authorized by the Trustee to distribute any property directly to Y without passing the asset through the Trust.

Y is now requesting the Executor to authorize a distribution of a portion of the Stock to the Trust, and then that the Trustee authorize a distribution of that Stock to Y. Y agrees to be liable for a proportionate obligation to pay estate taxes relative to the value of the distributed Stock. The form of the proposed transaction will be a direct distribution of the Stock from the Executor to Y.

It is likely that substantially similar series of transactions will be undertaken in subsequent years.

REPRESENTATIONS

In connection with the proposed transaction, the following representations have been made:

- a. At the time of the redemption, the cash to be received by Y in the proposed redemption will be equal to the fair market value of the Stock exchanged therefore.
- b. The aggregate fair market value (for federal estate tax purposes) of the Stock included in the gross estate of X exceeded 35% of the value of Decedent's gross estate, reduced by the sum of the amounts allowable as a deduction under §§ 2053 and 2054 of the Code. For purposes of this representation, the Stock treated as included in determining the value of X's gross estate are the shares held by X's estate.
- c. No shareholder of CORP is obligated to purchase any of the shares of the Stock to be redeemed by CORP.
- d. The amount to be distributed to Y in exchange for the Stock to be redeemed will not exceed the lesser of (i) the aggregate amount of such taxes and expenses referred to in § 301(a)(1) or (2) of the Code which remain unpaid immediately before the distribution or (ii) the aggregate of amounts referred to in § 303(a)(1) or (2) which are paid during the one year period beginning on the date of the distribution.
- e. The redemption will take place within the period allowed in § 303(b)(1) of the Code.
- f. CORP and Y will each pay their own respective expenses, if any, incurred in connection with the proposed transaction.

- g. Y will not transfer or surrender any property in the redemption other than the Stock of CORP.
- h. There will be no declared but unpaid dividends or funds set apart for dividends on any of the Stock to be redeemed from Y.

CONCLUSION

Based solely on the information submitted and the representations set forth above, it is held as follows:

1. The amounts received by Y in redemption of the Stock, as specified above, will be treated under § 303 as a distribution in full payment in exchange for the Stock redeemed to the extent the amount received does not exceed the sums specified in § 303(a) or § 303(b)(4) and provided further that (1) all the requirements of § 303(b) are satisfied and (2) the sum of all distribution proceeds from CORP's redemptions of the Stock treated as an exchange under § 303(a) does not exceed the qualified amounts determined under § 303(a)(1) and (2).
2. As provided in § 1001 of the Code, gain will be realized and recognized by Y, measured by the difference between the redemption price and the adjusted basis of the shares of Stock surrendered, as determined under § 1011 of the Code. Provided the Stock is a capital asset in the hands of Y, the gain, if any, will constitute capital gain subject to the provisions and limitations of subchapter P of Chapter 1.

PROCEDURAL STATEMENTS

The above rulings are effective to the extent that the amount distributed by CORP to Y equals the fair market value of the stock redeemed. No opinion is expressed as to the tax effect of the amount, if any, by which the distribution by CORP exceeds or is less than the fair market value of the stock redeemed. A determination of the fair market value of the stock redeemed is reserved until the income tax returns of the taxpayers concerned have been filed for the year in which the transaction is consummated.

In addition, no opinion is expressed about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effect resulting from, the transaction that are not specifically covered by the above rulings.

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed. Alternatively, a taxpayer filing its return electronically may satisfy this

requirement by attaching a statement to its federal income tax return that sets forth the date and control number of this ruling.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Alison G. Burns
Chief, Branch 2
Office of Associate Chief Counsel
(Corporate)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes